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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,155	11/09/2001	Peter Frisk	027650-937	7579

21839 7590 08/26/2003

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POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/26/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/890,155

Applicant(s)

FRISK ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 second paragraph rejections of Claims 1 – 6, 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542) and 35 U.S.C. 103(a) rejection of Claim 5 as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542) in view of Ikenoya et al (U.S. Patent No. 5,732,825) of record on page 2 of the previous Action, are withdrawn.

### NEW REJECTIONS

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542).

With regard to Claims 1 and 6, Eckstein discloses a packaging material for making a paper container (flexible sheet used to make a packaging tube; column 1, lines 6 – 14) comprising a thermoplastic material outermost layer (column 3, lines 38 – 43), a paper substrate layer (column 3, lines 38 – 43), a barrier layer (aluminum foil; column 3, lines 38 – 43) and a thermoplastic material innermost layer comprising linear low density polyethylene (therefore having a molecular weight distribution, and closer to the interior of the packaging material when

Art Unit: 1772

the material is formed into the container; column 5, lines 21 – 27) having a thickness of 20 micrometers (0.7 to 3.0 mils thick; column 2, lines 46 – 51). With regard to Claims 1 and 6, Eckstein fails to disclose a innermost layer having a density of 0.900 – 0.915 grams per milliliter, a peak melting point of 88 to 103 degrees Celsius, a melt flow index of 5 – 20 decigrams per minute and a swelling ratio of 1.4 – 1.6.

Gilliespie et al teach the use of a polyethylene having a density of less than 0.92 grams per milliliter (column 1, lines 53 – 63), a peak melting point of 106.9 degrees Celsius (column 7, lines 46 – 60; Table 1), a melt flow index of 4 decigrams per minute (column 2, lines 60 – 64) and a swelling ratio of 1.4 – 1.6 (column 2, lines 5 – 16) for the purpose of obtaining a heat seal layer which is resistant to degradation (column 1, lines 53 – 63). The desirability of providing for a polyethylene having a density of less than 0.92 grams per milliliter, a peak melting point of 106.9 degrees Celsius, a melt flow index of 4 decigrams per minute and a swelling ratio of 1.4 – 1.6 in Eckstein, which is a heat seal layer, would therefore be obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polyethylene having a density of less than 0.92 grams per milliliter, a peak melting point of 106.9 degrees Celsius, a melt flow index of 4 decigrams per minute and a swelling ratio of 1.4 – 1.6 in Eckstein in order to obtain a heat seal layer which is resistant to degradation as taught by Gilliespie et al.

Gillespie et al fail to disclose a density of 0.915 grams per milliliter, a peak melting point of 88 – 103 degrees Celsius, a melt flow index of 5 – 20 decigrams per minute and a swelling ratio of 1.4 – 1.6. However, as discussed above, Gillespie et al disclose a density of less than

Art Unit: 1772

0.92 grams per milliliter, a peak melting point of 106.9 degrees Celsius, a melt index of 4 decigrams per minute and a swelling ratio of 1.4 – 1.6. Therefore, the density, peak melting point, melt index (therefore melt flow index) and swelling ratio would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the density, peak melting point, melt index and swelling ratio, since the density, peak melting point, melt index and swelling ratio would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Gillespie et al in the absence of unexpected results. *In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980)*.

With regard to Claim 2, Eckstein et al fails to disclose a layer thickness of 2 – 15 micrometers. However, as stated above, Eckstein et al disclose a layer thickness of 20 micrometers. Therefore, the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the thickness, since the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Eckstein et al, in the absence of unexpected results. *In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980)*.

With regard to Claims 3 – 4, the packaging material disclosed by Eckstein comprises an adhesive layer which contains linear low density polyethylene (bonded to linear low density polyethylene; column 3, lines 44 – 56).

Art Unit: 1772

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and further in view of Ikenoya et al (U.S. Patent No. 5,732,825).

Eckstein and Gillespie et al disclose a packaging container comprising a thermoplastic material as discussed above. Eckstein and Gillespie et al fail to disclose a container comprising a strip tape covering a section of the innermost layer of the container.

Ikenoya et al teach the use of a strip tape to cover a section of the innermost layer of a container (column 5, lines 35 – 40; Figure 2) for the purpose of making a container which prevents leakage of liquid food (column 5, lines 45 – 50). The desirability of providing for a strip tape to cover a section of the innermost layer of Eckstein and Gillespie et al, which is a container, would therefore have been obvious to one ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a strip tape covering a section of the innermost layer in Eckstein and Gillespie et al in order to make a container which prevents leakage of liquid food as taught by Ikenoya et al.

#### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejections of Claims 1 – 6, 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542), 35 U.S.C. 103(a) rejection of Claim 5, as being unpatentable over Gillespie et al (U.S. Patent No. 5,536,542) in view of Ikenoya et al (U.S. Patent No. 5,732,825), of record on page 2 of the previous Action, have been considered and


Art Unit: 1772

have been found to be persuasive. The rejections are therefore withdrawn. The new 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and 35 U.S.C. 103(a) rejection of Claim 5 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and further in view of Ikenoya et al (U.S. Patent No. 5,732,825) above are directed to amended Claims 1 – 6.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772*8/18/03*